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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-fifth session

Summary record (partial)* of the 334th meeting
Held at the Palais des Nations, Geneva, on Friday, 2 September 2016, at 10 a.m.

Chair: Ms. Dzumhur (Vice-Chair)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Second periodic report of Sri Lanka (continued) (CMW/C/LKA/QPR/2 and CMW/C/LKA/2)

1. *At the invitation of the Chair, the delegation of Sri Lanka took places at the Committee table.*

2. **Ms. Jayasuriya** (Sri Lanka) said that the 2014 visit by the Special Rapporteur on the human rights of migrants had been viewed as an important learning experience. It had highlighted existing best practices and identified areas where further effort was required. The Rapporteur had been able to meet with families of migrant workers, returned migrants and civil society organizations, and had participated in a workshop on recruitment practices organized by the Ministry of Foreign Employment. The authorities had extended full cooperation before, during and after the visit and had taken due note of the observations and recommendations contained in the Special Rapporteur's report (A/HRC/29/36/Add.1). Moreover, the Government had made migration part of its national development policy. It engaged openly and constructively with United Nations human rights treaty bodies and had extended a standing invitation to all special procedures mandate holders.

3. The Government recognized the importance of reducing recruitment fees for migrant workers and was seeking to prevent abusive practices in that regard, including through the Sri Lanka Foreign Employment Agency, which was part of the Ministry of Foreign Employment and which provided employment opportunities at a lower cost than private employment agencies. The police had intervened in a number of cases to arrest recruiters who levied arbitrary and exorbitant fees. There were, however, practical problems associated with zero-cost recruitment, and a recent symposium on the matter had concluded that it was not a practical option.

4. Some consular missions had mobile offices to facilitate access to their services by migrant workers and eight missions had safe houses staffed by female officers for migrant workers who had suffered sexual abuse. Around 30 per cent of consular officials dealing with the welfare of migrant workers were women. Issues relating to migrant workers were discussed at regular ambassadorial conferences organized by the Ministry of Foreign Affairs.

5. The Government had taken note of the recommendation that irregular migration should be considered an administrative rather than a criminal offence. In general, the authorities took action against traffickers and treated migrants who had been trafficked as victims. According to statistics of the Office of the United Nations High Commissioner for Refugees, there were currently approximately 784 refugees and 695 asylum seekers in Sri Lanka. The Government was aware of the importance of developing a nuanced and coherent national policy towards irregular immigration. The competent authority in that regard was the Department of Immigration and Emigration, which was no longer part of the Ministry of Defence, but of the Ministry of National Policies and Economic Affairs. Persons entering Sri Lanka in violation of the law could be held in detention until such time as arrangements were made for their deportation. Families with children were detained only in exceptional circumstances, where it was necessary to keep them in approved places to ensure their safety and security. Detained migrants had access to mobile phones and the Internet and were provided with free medical care.

6. **Mr. Aryasinha** (Sri Lanka) said that his Government's engagement with the Special Rapporteur had extended beyond the 2014 visit and had included meetings and dialogues on ethical recruitment practices and other topics. Since 2013, Sri Lanka had been Chair of

the Colombo Process. Under his country's leadership, the Process had continued its efforts to empower Asian migrant workers by focusing on, inter alia, qualification recognition, which helped migrants to move within the hierarchy of jobs relevant to their skills while abroad and facilitated their reintegration on their return. Another area of focus had been pre-departure orientation, which included the aspect of migration and health. The Colombo Process had also worked with States and banks to reduce the transaction costs associated with workers' remittances. Future areas of focus for the Colombo Process would include implementing the migration-related Sustainable Development Goals, promoting equality for female migrant workers and sharing best practices among member States in the field of consular services for migrant workers.

7. Improving the lot of the 45 million migrant workers from Asia in the Gulf region would require sustained and coordinated efforts on the part of many different stakeholders, including the Committee. Sri Lanka was committed to continuing those efforts in its role as Chair of the Abu Dhabi Dialogue, a mechanism that brought together both labour-sending and labour-receiving countries.

8. The Government was seeking to engage in constructive and inclusive dialogue with Sri Lankan workers overseas, acknowledging and addressing their concerns and recognizing the important role they could play in national reconciliation and development. The main institution involved was the Ministry of Foreign Affairs, which was reaching out to the Sri Lankan communities abroad that had been reluctant to engage with the Government after years of mistrust and bitterness. The Ministry had recently established a special division for Sri Lankans overseas and was currently organizing a special festival for them. If successful, the festival could become a regular annual event, which would strengthen ties with the overseas communities and enable the country to benefit from their knowledge, expertise and skills. Interaction with the overseas communities had brought to light certain practical and administrative difficulties that expatriate Sri Lankans faced in dealing with local authorities at home, and the Ministry was working to find solutions to those problems.

9. **Mr. Wijeratne** (Sri Lanka) said that the Convention received wide attention from government bodies and civil society organizations, particularly on the occasion of Human Rights Day. Public institutions had organized human rights awareness-raising campaigns that focused on the Convention and on recommendations made by the Committee. Sri Lankan media outlets also gave coverage to the Convention and to the Committee's recommendations, and reported, sometimes critically, on programmes conducted by the Sri Lanka Bureau of Foreign Employment.

10. The National Human Rights Commission of Sri Lanka took an active interest in the dissemination of information on the Convention. Some higher education institutions offered modules on the Convention and some State schools held competitions related to the promotion and protection of human rights. Given the high number of Sri Lankan migrant workers, however, the Government recognized the need to make the Convention known to a wider public.

11. The National Human Rights Action Plan 2011-2016 had identified eight key areas of action: civil and political rights; economic, social and cultural rights; the prevention of torture; the rights of internally displaced persons; labour rights; children's rights; women's rights; and the rights of migrant workers and members of their families. Challenges regarding the implementation of the Plan had stemmed from the failure to appoint a coordinating body.

12. When the current Government had taken office in January 2015, it had decided to incorporate some of the objectives and activities of the Plan into its reform agenda. As part of the fulfilment of those objectives, the Government was reviewing the Prevention of

Terrorism Act with the intention of bringing it into line with international human rights standards. Sri Lanka had become a party to the International Convention for the Protection of All Persons from Enforced Disappearance, and the Government had drawn up comprehensive implementing legislation. Moreover, the Right to Information Act had been passed and consideration was being given to the establishment of a new system to prevent sexual harassment in the workplace.

13. For the purposes of developing the National Human Rights Action Plan 2017-2021, the Government had established an interministerial committee on human rights and a steering committee comprising senior officials from relevant ministries and institutions. Drafting committees had also been set up to provide input related to 10 thematic areas, including the rights of migrant workers.

14. Sri Lanka enjoyed very good relations with Australia, particularly with respect to migration issues. A joint working group had been established to combat people smuggling and transnational crime, including through the sharing of information. There was extensive cooperation between the judicial and law enforcement authorities of the two countries. A workplan had been proposed for future legal cooperation, and an agreement had been reached to commence discussions on a draft memorandum of understanding on readmission and returns.

15. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, in which the Australian Government had taken a leading role, provided a platform for regional cooperation. One of its principal aims was to address the root causes of irregular migration. As acknowledged in the Jakarta Declaration on Addressing Irregular Movement of Persons, the causes were complex and multidimensional. Regional efforts needed to focus on prevention, early detection, protection and prosecution. It was important to ensure that the most affected countries of origin, transit and destination were involved in the Process. It was also important to respect the principles of national independence, sovereignty and non-interference in the internal affairs of other States. Thanks to the Process, there was already significant cooperation in the areas of human rights, economic development, poverty reduction, justice and democracy.

16. Consideration was being given to the question of the voting rights of Sri Lankan migrant workers in response to a long-felt need to review the overall electoral system. The Government remained reluctant to recognize the competence of the Committee to receive communications from States parties and individuals, as provided in articles 76 and 77 of the Convention, in a context in which many of the major labour-receiving countries were not parties to the Convention. Sri Lanka could be left on an unequal footing when it came to responding to communications, especially if they concerned the treatment of Sri Lankan migrant workers in a State not bound by the Convention. The Government would review its position once a sufficient number of labour-receiving countries had ratified the Convention, which it hoped would be in the near future.

17. **Mr. Wanasekara** (Sri Lanka) said that the Sri Lanka Bureau of Foreign Employment worked closely with a range of civil society organizations, with which it had recently undertaken joint visits to Jordan and Lebanon. During those visits, Bureau personnel had interacted with local organizations working on migrant labour issues and had had the opportunity to observe the education and health services available to children of migrant workers. The National Labour Migration Policy fell under the responsibility of the Ministry of Foreign Employment, which delegated tasks to other key stakeholders. The implementation of the Policy was monitored and evaluated by the National Advisory Committee on Labour Migration, which had among its members representatives of government institutions, international organizations, NGOs, recruitment agencies, academia and trade unions. Special projects were being carried out under the Policy with the technical

assistance of the International Labour Organization. Lastly, the Government had increased financial incentives aimed at encouraging the flow of remittances through formal channels.

18. **The Chair**, thanking the delegation for its comprehensive replies, said that the Committee was keenly interested in the Colombo Process and the Abu Dhabi Dialogue, which offered a valuable opportunity for communication between labour-sending and labour-receiving countries.

19. **Ms. Ladjel** (Country Rapporteur) said that she wondered whether a 12-day pre-departure orientation programme was sufficient to prepare prospective migrant workers. She would like to know whether the Convention was covered in the pre-departure orientation programme, in order to help migrants to assert their rights in the destination country. She would also like to know how the reintegration of returning migrant workers was handled, particularly the reintegration of women migrant workers.

20. She would welcome additional information on how the protection of trafficking victims was organized, how the budget was determined and what institutions and other actors were called upon to help with protection. According to information received, 49 per cent of migrant workers from Sri Lanka were women, and many of them were working in Gulf States; she would like to know if social protection arrangements for those women were adequate. She would also like to know how consular aid was organized, particularly with regard to migrant workers in detention. Were visits made to prisoners and was legal support or psychosocial assistance provided where necessary?

21. **Mr. Brillantes** (Country Rapporteur) asked whether the State party intended to review the 2008 National Labour Migration Policy with a view to expanding its scope to cover Sri Lankan migrant workers in an irregular situation. He would also like information on the budget allocated for implementation of the Policy. The Committee appreciated the State party's efforts to incorporate features of International Labour Organization (ILO) conventions into its domestic programmes, but considered that such measures were not a substitute for ratification. Did the State party intend to ratify ILO conventions No. 97, on Migration for Employment; No. 143, on Migrant Workers; and No. 189, on Decent Work for Domestic Workers?

22. There were persistent reports of corruption among officials with responsibilities relating to the Convention. The problem had apparently increased since the introduction of the requirement for a family background report. He would like to know what measures had been taken to prevent such corruption. He also wished to know what progress had been made towards having a standard domestic workers' contract developed in cooperation with UN-Women and endorsed by States of employment. Judging from the report of the Special Rapporteur on the human rights of migrants, the use of administrative detention seemed to be institutionalized in the State party. Were any efforts being made to correct that situation in order to comply with the Convention? Lastly, he would like to know whether the State party had any programmes to address the needs of migrant workers with disabilities.

23. **Mr. Ceriani**, recalling that the delegation had stated that families were detained only in exceptional cases, asked what kind of circumstances might give rise to such a measure. His impression from the delegation's replies was that detention was almost automatic, yet the obligation under the Convention was to safeguard an individual's liberty except where temporary measures were truly necessary. He would appreciate clarification of the State party's policy in that regard.

24. He would like to know what procedure was applied in the event of immediate removal of a migrant and whether that procedure included all due process rights covered by the Convention. The language used in the Immigrants and Emigrants Act, which dated from 1949, raised a number of questions. Article 31, on the grounds for expulsion, referred to "mentally defective" persons and persons who were undesirable for medical reasons. He

wondered what kind of medical conditions might give rise to deportation. Under article 18, a medical examination might be carried out and, under article 19, officials were empowered to inspect messages or letters, among other documents, being carried by a person seeking entry. Were those articles still applicable and applied?

25. The family background report appeared to have been instituted as a means of resolving a conflict of rights, specifically children's rights and women's rights. However, the State also had an obligation to support families and uphold parents' rights so that children could grow up in decent conditions. A proper analysis was needed of what might lead a mother to migrate and leave her children behind, including any difficulties she might face in asserting her rights as a person within her own community and realizing her desire to attain a decent standard of living. He wondered what alternatives women had that would enable them to access those rights without migrating. If a woman decided that migration was the only way she could improve her own and her family's standard of living, could she take her children with her? What possibilities were there for entire families to migrate? In that connection, he wondered what consideration was given to men's responsibility in the upbringing and development of their children.

26. With reference to the bilateral agreement with Australia, he wondered whether it contained any clauses specifically referring to migrant workers' rights. He would be interested to know whether, in the course of bilateral discussions, Sri Lankan authorities had asked Australia to accede to the Convention in order to ensure that both countries were treating migrant workers in the same way. Lastly, he invited the delegation to comment on the fact that no migrant rights groups were represented on the Board of Directors of the Sri Lanka Foreign Employment Agency, while recruitment agencies were well represented.

27. **The Chair**, affirming the importance of ensuring the involvement of migrant workers on the Board of the Foreign Employment Agency, said that the State party was to be commended for the numerous positive steps it had taken, particularly with respect to legislation and policies on the rights of migrant workers. She would like to know what efforts had been made to regain "A" status for the National Human Rights Commission. She understood that it had been downgraded because of failure to produce a report on killings and enforced disappearances. She also wished to know whether there was in fact a forum for regular consultation with civil society.

28. She would appreciate some information on government measures to put a stop to the sponsorship method of recruitment, whereby women, in particular, lived with and worked for their sponsor families without proper conditions for normal life, including family life. She would also like to know more about arrangements for independent oversight of recruitment agencies. In addition, she wondered what was done to help protect the health of migrant workers so that when they returned to Sri Lanka they would still be fit for work and the country would not incur additional health-care costs. According to the Optional Protocol to the Convention against Torture, oversight of detention centres should be carried out by an independent body. With that in mind, she wished to know what oversight arrangements were in place for detention centres.

29. **Mr. El-Boral** said that his questions regarding the Abu Dhabi Dialogue had not been fully answered. He recalled that he had asked about the *kafala* system, equal pay, and family reunification. In addition, he would like to know whether Sri Lankan workers in the Gulf States had seen their wages fall as a result of the drop in oil prices.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

30. **Mr. Wijeratne** (Sri Lanka) said that the delegation welcomed the suggestion that information on the Convention should be included in pre-departure orientation programmes. As to protection of victims of trafficking, various measures had been taken, including the establishment of a shelter for women victims. Further effort was needed, however, to

overcome the social and cultural barriers that prevented many women from seeking assistance out of fear of stigmatization. The National Anti-Human Trafficking Task Force had been charged with taking action to address corruption and complicity in trafficking by migration officials. By March 2017 it was expected to have initiated proceedings against 26 migration officials and to have completed proceedings in 189 cases involving private recruitment agencies. It was also expected to have conducted a country-wide awareness-raising programme on trafficking in persons.

31. While there was scope for improvement in terms of how consular officials dealt with complaints from Sri Lankan migrant workers abroad, in most cases the destination country already had comprehensive processes in place to handle grievances from migrant workers and sponsors alike. In general, it was the sponsor who was penalized. Those who were found to have been abusive could be barred from sponsoring foreign domestic workers in future. With regard to the detention of migrants in an irregular situation, the Government would welcome further guidance and information on best practices from other States, particularly in relation to the detention of children. He understood that it was standard practice for immigration authorities to detain migrants who entered their country illegally. That was the current practice in Sri Lanka, unless the person was seeking asylum, in which case there was a different procedure. In all cases, however, the diplomatic mission of the person concerned would be informed of his or her detention. In that connection, the bilateral agreement between Sri Lanka and Australia did not relate solely to irregular migration; it covered a wide range of other issues, including reintegration of returning migrants.

32. Lastly, the Government was exploring the possibility of ratifying the ILO Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and Domestic Workers Convention, 2011 (No. 189).

33. **Ms. Jayasuriya** (Sri Lanka) said that Sri Lanka was one of the few countries to have developed a comprehensive national policy on migration and health, which was the product of consultation with a broad array of stakeholders. The policy was supported by the World Health Organization and the International Organization for Migration. Sri Lanka was also working to promote attention to migrant health in the framework of the Colombo Process. Citizens and non-citizens, including migrant workers, enjoyed equal access to free health care in Sri Lanka. Specific programmes were in place to provide, inter alia, medical care, temporary shelter and psychosocial support to returning Sri Lankan migrants. A centre established for that purpose had assisted more than 15,000 Sri Lankan migrants since 2014.

34. **Mr. Wanasekara** (Sri Lanka) said that efforts were being made to empower migrant workers by extending the duration of pre-departure training for women domestic workers from 21 days to 40 days. The training, which was provided in the Sinhala and Tamil languages, included modules on the rights and responsibilities of migrants in countries of destination. The National Advisory Committee on Labour Migration, which met every three months, served as a forum for regular consultation with civil society organizations. All licensed private recruitment agencies had received training on the Code of Ethical Conduct, which was now being implemented.

35. Comprehensive mechanisms were in place to provide care and assistance to returning migrant workers, in particular those who returned with disabilities. By way of example, free medical assistance and other services were provided at the *Sahana Piyasa* centre, located near Bandaranaike International Airport. Since 2014, thousands of returned migrants had received medical attention either at the centre or at the nearest hospital, depending on their needs. Migrants whose disabilities did not require immediate medical attention were reunited with their families. Two insurance schemes were also available to enable injured migrant workers to seek compensation. The insurance was free and covered

all migrant workers registered with the Bureau of Foreign Employment. To date in 2016, some 1,200 claims had been lodged and 87 million Sri Lankan rupees had been paid out in compensation.

36. **Ms. Ladjel** said that she wished to thank the delegation for the constructive dialogue and commend the State party for its efforts to protect migrant workers. She welcomed the State party's withdrawal of its reservation to article 29 of the Convention, which was testament to its political will to bring domestic legislation into conformity with the Convention. She expressed the hope that the Government would proceed to ratify ILO conventions Nos. 97, 143 and 189. She also encouraged it to consider ratifying the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, as a means of further enhancing protection for migrants workers.

37. **Mr. Brillantes** said that he had much appreciated the quality and richness of the dialogue with the Sri Lankan delegation. It was clear that Sri Lanka was a major proponent of migrant workers' rights. Its leadership role in the Colombo Process was well recognized, and the measures it had taken to prevent illegal recruitment and regulate private employment agencies served as guidance to other States. Its prominence and achievements, however, meant that there were high expectations that the State party could and would achieve even more. The Committee hoped that its concluding observations would be of benefit in that regard.

38. **Mr. Aryasinha** (Sri Lanka) said that the dialogue with the Committee had served as an opportunity to demonstrate the importance that his Government placed on the welfare of Sri Lankan migrant workers, who represented a sizeable proportion of the country's population and made an important contribution to its economy. The Government was aware, however, that many of its nationals were in situations of vulnerability overseas. It had therefore consistently striven to be at the forefront of regional and international efforts to improve the protection of migrant workers and actively sought to work collaboratively with destination countries with a view to safeguarding its citizens.

The discussion covered in the summary record ended at 12.25 p.m.